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ABSTRACT

Based on research indicating that restrictive judicial language directed at jurors encourages reactance, or decisions contrary to the judge's instructions, two experiments were conducted to determine whether courtroom jurors merely admonished to ignore inadmissible evidence would be more inclined to comply with judicial instructions than would jurors provided with explanations for the admonition. In the first experiment, college students placed in one control and three experimental groups were given a summary of a murder and robbery case, with the experimental groups receiving an additional piece of evidence of questionable legality. In the first condition the judge ruled the disputed evidence was admissible, in the second the evidence was ruled inadmissible, and in the third, the subjects were told the evidence was inadmissable but were given an explanation for the ruling. The results indicated that the inadmissible testimony and admonitions did not significantly influence the final verdict, but that the admonition with explanation may have diminished the subjects' reactance where sentencing was concerned. In the second experiment, which was of identical design but involved assault and battery and a monetary decision rather than a jail sentence, the judicial justification led to the subjects' increased reliance on the inadmissible testimony, or a strong reactance. The results provide strong support for the notion that rulings of inadmissible evidence influence jurors' decisions. (HTH)

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REACTANCE IN THE JURY ROOM: DECISION BY MEN AND NOT BY LAWS

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With the possible exception of the American military establishment, the American judicial system stands as an exemplar of a rules-based institution. The presupposition that we are a nation of laws and not men has been severely shaken by contemporary research of the jury system. Post-decision affidavits reveal that decisions have been based upon the toss of a coin, the advice of overeager bailiffs, and have been reached by inebriated participants. (1) The ideal of unanimous verdicts is apparently an ephemeral guarantee in many cases. Five thousand hours of post-decision interviews indicate that civil awards are frequently based upon pre-conceived notions about family roles, personal experiences, and the outside information brought by veniremen to the jury room. (2) Simulations conducted with real jurors reveal decisions based upon the demeanor of the defendant or the sex of trial participants. (3) These findings are inconsistent with judicial rules governing "sympathy," "the examination of evidence and testimony," and the Supreme Court requirement of "Equal Justice Under Law." Thus, the illusion of a decision-making body bound by rules has been challenged.

The vast disparity between the goal of rules-based decision-making and its realization has not diminished the enforcement effort exerted by American jurists. Unfortunately, the inviolability of the jury room makes it difficult for an attorney to obtain evidence to overturn a jury verdict. Juror misconduct lies outside the scrutiny of the appellate courts in most jurisdictions. This Delaval rule forces judges to wield their influence before deliberations begin. (4) The most commonly used vehicle for rule enforcement is the judicial charge. By telling the jury what to consider and what to ignore, the judge attempts to effect a verdict in compliance with trial rules.

Judicial guidance has proved especially popular in two areas: inadmissible evidence and prejudicial publicity. Attorneys, striving to support their positions occasionally ask inappropriate questions, introduce illegally obtained evidence, or make imprudent references to the participants' pasts. When this occurs, the judge is left with a variety of equally distastfeul alternatives. The judge can declare a mistrial. This prolongs the case, crowds the docket, and wastes scarce court resources. Barring this option, the judge can rule that the evidence is inadmissible. This ruling may be accompanied by an admonition to ignore the questionable testimony. On occasion this charge will include the reasons for the ruling (although a casual glance at a sample of judicial directives reveals that this is the exception rather than the rule.) (5) The judicial charge then, stands as the crucial instrument of influence. It is the tool with which the courtroom referee attempts to mold the jury verdict. As one might expect, the process of influence is complex. A review of judicial research on judicial instruction reveals that the judge should exercise care in choosing his or her instructions.

The earliest research suggested that judicial instructions could influence jurors' decisions. Fifteen years ago Simon discovered that jurors, if so instructed by a judge, could ignore extremely prejudicial publicity concerning the criminal record of an imaginary defendant. While 67% of the subjects exposed to the sensational accounts of a murder trial believed that the defendant was guilty, the number declined to 37% after exposure to instructions and testimony. This conviction rate was comparable to that produced by jurors exposed to more neutral journalistic coverage. The judicial "admonition" in this case

was couched in encouraging, non-restrictive terms: "Before the trial begins we ask that you lay aside any opinion...the decision...should be based on evidence..." In addition, the directions were issued before the trial evidence was presented. For years, this study stood unchallenged as evidence that judicial instructions could diminish the influence of extraneous factors.

In 1973, Sue, et. al. published results which contrasted sharply with the findings of Simon. In a mock jury study, the researchers found that evidence was more damaging when labeled inadmissible. (7) In a similar design Wolf and Montgomery found that testimony accompanied by strong directives to ignore it were associated with more convictions than were summaries in which the testimony was admitted into evidence. (8) Interviews with real jurors produced the same findings. In civil cases, the knowledge that the defendant had insurance was associated with higher awards, even though the judges in such cases direct the jury to ignore this information. (9) Reinard and Reynolds, in another mock jury experiment, found that the same evidence was more damaging when accompanied by an objection from the opponents' attorney. (10) Lenehan and O'Neill continued the line of research with an exploration of judicial bias. (11) These researchers found that when "judges" appeared to exhibit a bias for the defense or prosecution jurors tended to find in the opposite direction. This body of research provides substantial support for Brehm's reactance theory. (12) Brehm's theory suggests that efforts directed at restricting one's freedom will result in a "boomerang" or "backlash" effect. That is, restrictive efforts encourage rebellion rather than discouraging such behaviors. In the judicial setting this means that judicial efforts to exercise control over jury decisions may result in decisions inconsistent with the rule of law.

The two bodies of research apparently provide conflicting interpretations of jurors' reactions to admonitions. However, a closer examination of the research designs suggests that these findings may be reconciled. While the instructions in the Simon simulation were suggestive (choosing language like "ask" and "should"), Wolf and Montgomery purposely attempted to restrain the choice of subjects. These researchers selected more strongly worded directives including the term "must" and the phrase "you have no choice." (13) Sue, et. al. chose equally directive phrases, like: "the jury must disregard..." (14) Broeder studied the decisions rendered in actual jury trials. The judicial instructions offered in patterned sets demonstrates the tendency to rely upon extremely restrictive language. Some illustrative phrases include: "You must listen," "You must not be influenced," and "You must never..." (15) Lenehan and O'Neill structured their instructions to create a distinct impression of bias. Their objective was to provide stimuli which left the jurors virtually no discretion in the decision. (16) Thus, a comparison of stimuli reveals that the "admonition" used in the Simon case may not have been sufficient to induce a reactance effect. By contrast, the judicial directives in the later research was far more restrictive. This direct effort to control the decision may have been sufficient to trigger the "boomerang effect" identified by Brehm.

While the reactance research demonstrates that judicial admonitions can be counterproductive, this research does not provide much guidance to the author of the judicial instruction. The question arises: "How can the jury be effectively guided into rules-bound decisions?" The research does suggest

that language choice may play a role in determining the magnitude of the reactance effect. More restrictive language is associated with more significant reactance effects. An interesting quality shared by most judicial rulings and instructions related to inadmissible testimony is their terseness. The instructions offered in the prior research illustrates this point. Usually the judge simply directs the jury to ignore the evidence. One strategy which might reduce the the reactance effects of such instructions would be legitimation efforts. The reasons for such rulings might provide the juror with ample warrant to disregard the testimony. Unjustified exclusions may enhance the reacatnce effects of judicial charges. While Brehm claims that justificatory statements will not completely abrogate the reactance effect, he does admit that such information could diminish its size. (17) The recent findings of Lenehan and O'Neill, however, indicate that care should be exercised in the use of such techniques. Providing too much information may create the impression of judicial bias. Thus, such explanations may also increase reactance effects. This research was designed to test the efficacy of the justificatory statement in the judicial charge. The review of the literature leads to this research question:

> Will jurors admonished to ignore incriminating evidence be more inclined to comply with judicial instructions than jurors provided with explanations for the admonition?

The design should also provide supporting evidence for the research conclusions of earlier researchers.

One problem with testing such hypotheses is that each case is individualized. That is, there will be disparities in the weight of evidence, the language chosen for the instruction, and the importance which the jury places upon the evidence called into question. In order to explore the potential role such factors might play, two simulations were used. Supplementary research hypotheses included:

> H1: Inadmissible testimony will influence jurors' decisions in a simulated case.
>
> H2: Jurors voting for conviction will charcterize the prosecution's case as stronger than will simulated jurors voting for acquittal.

Experiment One: Robbery-Murder

Method

Participants in this experiment were recruited from Introductory Public Speaking classes. The study employed a 1 X 4 factorial design with the 93 subjects assigned randomly to cells. Members of the control group were given a summary of a robbery-murder case which took place in New York City. The case involved the murder of a shopkeeper during a robbery. The subjects included in the experimental groups were given the same summary including a piece of highly incriminating wiretap evidence of questionable legality.

In one condition the judge ruled that this disputed evidence was admissible. In a second condition the evidence was ruled inadmissible. In the final condition subjects were told that the evidence was ruled inadmissible, but were given an explanation for the ruling. These stimuli material have been used in earlier research. Sue, et. al. found that the key testimony in this case could influence mock jurors' decisions.

Three dependent measures were used. The verdict, a hypothetical sentence, and confidence instruments tapped the jurors' decisions. Prior research has relied exclusively upon on probabilistic evaluations of guilt. However, the trial offers only a dichotomous choice. This procedural difference could diminish the significance of the influence of extraneous factors on the trial decision. The sentence measure provided subjects with an opportunity to express their feelings using a less absolute index of judgment. The six sentencing alternatives ranged from "life imprisonment without chance of parole" to "Maximum sentence of less than 10 years."

Results

An analysis of the dichotmous verdicts of the subjects (See Table 1.) suggests that the inadmissible testimony and admonitions did not signficantly influence the final decisions of jurors. (Chi-square=2.3, d.f.=3, p=.51)

Table 1.

Chi-Square Analysis of
Verdicts Based Upon Evidence and Admonitions

VERDICT	Control	Admissible	Inadmissible with Admonition	Inadmissible with Admonition & Justification
Guilty	13	14	10	12
Not Guilty	9	10	15	12

χ^2
d.f.=3
p=.51

This is consistent with the claim that research using probabilistic evaluations of jurors' decisions offer mixed blessings. While such instruments may be more sensitive to the opinions of mock jurors, some of the variance may be diminished by the dichotomous decision juncture offered by the trial system. These findings are consistent with those of Simon (who also used dichotomous verdicts), that is: extraneous factors may not play a significant role in the actual decisions of juries.

The results obtained for the sentencing data suggested that justificatory arguments might diminish the influence of the reactance effect. In this experiment subjects provided with a justification for the judicial admonition DID sentence less severely than subjects receiving only the admonition. The group exposed to the justification produced a mean score of

1.83 while the group given only an admonition provided a mean rating of 1.50. This difference was in the predicted direction, but did not achieve statistical significance. (T=-1.73, d.f.=56, p=.089)

H1 was designed to test the simulated jurors' ability to follow rules when making decisions. If jurors cannot ignore inadmissible testimony, then the presupposition that the judicial system is rule-following is suspect. The results reveal that jurors do not systematically disregard testimony, even when so instructed by a judge. In this case, subjects receiving a judicial admonition sentenced the hypothetical defendant more severely than did subjects not exposed to this incriminating testimony. The former group produced a mean sentence rating of 1.50, while the control group's mean was 2.46. This difference was statistically significant. (T=2.04, d.f.=56, p=.046) If the jurors had been making an actual decision the defendant exposed to the inadmissible testimony would (on the average), be sentenced to life imprisonment, while the defendant not so disadvantaged would receive a 30-year sentence.

H2 was supported. Subjects voting for conviction did rate the prosecution's case as stronger. (T=-7.42, d.f.=91, p=.001) This finding suggests that the decisions of mock jurors follows their perception of the strength of the cases (or vice versa).

Experiment Two: Assault-Battery

Method

118 undergraduates were recruited from a variety of humanities courses to participate in the second experiment. This study also employed a 1 X 4 factorial design with subjectes assigned randomly to cells. In this experiment the Adams versus Zemp summary was used. (18) This simulation was less heinous than the murder simulation and featured a monetary award rather than a sentence. In this case the treatments were identical to those in Experiment One. Thibaut and Walker's pretest of the facts in the Adams versus Zemp case allowed the selection of 6 facts in favor of the defense and 6 favoring the prosecution that were approximately equal in strength. The facts were arranged in chronological order and the prosecution's summary was presented first. The key testimony in this case was the evidence offered by a police undercover agent at the site of the incident. Once again, the experimental conditions including a decision to exclude the testimony accompanied by an explanation of the rule of evidence.

Dependent measures included probabilistic evaluations of guilt, an index of decision confidence, a hypothetical compensation award, an evaluation of judicial bias, a measure of valence assigned to freedom of choice in the judicial arena, and a measure of the importance of the inadmissible evidence. Measures included semantic differentials featuring 11 choice points.

116 of the 118 subjects returned completed questionnaires. Post-experiment interviews suggested that the subjects did not guess the purpose of the experiment.

Results

The second experiment produced results which contrasted sharply with the findings of the first experiment. While judicial directives again played a key role in the decision, they produced the opposite effects in the second experiment. In this case judicial justification led to the increased reliance on the inadmissible testimony. (See Table 3.)

Table 3.

Mean Judgments of Defendant's Guilt *

Verdict Measurement Method	Judge's Ruling			
	Control	Admissible	Inadmissible with Admonition	Inadmissible with Admonition and Justification
Probability 0-100%	49.48[a]	69.03[b]	64.33[a,b]	69.35[b]
Extent to Which Defend. was Innocent	4.97[a]	7.21[b]	6.77[a,b]	7.42[a,b]
Agreement w/ Statement of Guilty	5.17[a]	7.55[b]	6.97[a,b]	7.35[a,b]

* Scores with same script (a,b) are not significantly different. Tukey B (a=.05) and Scheffe's (a=.10) produce the same results. Scripts apply only to scores in the same row.

For two of the three verdict measures, the justification produced heavier reliance on the inadmissible evidence (although in none of these cases was the difference statistically significant). For all three measures the evaluation of guilt associated with an admonition accompnaied by explanation exceeded the judgment of guilt reached by those exposed to a simple admonition.

While an analysis of variance reveals that a significant amount of variance is accounted for (Eta-squared=9.3%), the majority of this difference is found in the evaluations of those exposed to the key testimony compared with those exposed to the summary without this information. This finding suggests that the evidence played a much more important role in the decision-making process than did judicial instructions.

Table 4.

Analysis of Variance Table
Analysis of Verdicts: Probability of Innocence

SOURCE	d.f.	M.S.	F	p	Eta-Squared
Between Groups	3	35.5	3.77	.013	.093
Within Groups	110	9.4			

Discussion

Admonitions may be counterproductive. In the first experiment an admonition without explanation led to a more pronounced reactance effect. In the second experiment, the admonition accompnaied by an explanation of the decision was counterproductive, although not significantly so. The subjects in the latter experiment did report that the judge appeared to favor the defendant more when admonitions were provided. ($F=3.7$, $d.f.=3,110$, $p=.013$) However, there was no difference in subjects' perceptions of judicial attempts to influence their decisions. These findings offer limited support for the recent conclusions of Lenehan and O'Neill. It appears that, at some point, argumentation efforts lead to a perception of bias. This perception in turn, may prompt a reactance effect. Future research should be directed at assessing those dimensions of argument which lead to this reactance effect. While it seems that these sorts of appeals play a role in the magnitude of the effect, it is unclear what sorts of arguments (language) will minimize the reactance identified in mock jury research. The strength of the admonition may provide one fruitful area for exploration.

The research suggests that jurors may internalize standards of proof. Experiment 1 indicates that jurors do evaluate the strength of the winning side's case more favorably than that of the losing side. An attribution interpretation of this data would hold that subjects, having voted guilty, interpret the strength of the evidence to fit their construction of the case.

This research provides strong support for the notion that inadmissible evidence influences jurors' decisions. The best method for reducing this influence undoubtedly is eliminating the questionable testimony. The recent experimentation with videotaped affidavits may offer the best guarantee of rule-based decision-making. The editing of inadmissible evidence would allow decisions free from extraneous influence.

Footnotes

1 Experimental research supports the majority rule hypothesis. See, for example, J. H. Davis, "Group Decision and Social Interaction: A Theory of Social Decision Schemes," Psychological Review, 80 (1973): 2; and J. B. Kessler, V. F. Follert, and E. Karnes, "Sex Based Voting on Simulated Juries," Paper presented at the S.C.A. Convention, December 1975. Subjects in these studies indicated on post-decision questionnaires that they had "gone along" with the majority despite their basically unshaken conviction that they were probably correct. Similar findings were unearthed by H. Kalven and H. Zeisel in their landmark report the American Jury (Chicago: University of Chicago Press) 1966. Finally, M. J. Saks reports related results in Jury Verdicts (Lexington, Mass.: Lexington Books) 1977. In the last study quorum juries produced conviction-acquittal rates which did not differ significantly from the rates produced by juries using a unanimous verdict decision rule.

2 Dale W. Broeder, "Plaintiffs' Family Status as Affecting Juror Behavior," Journal of Public Law 1965.

3 Joan B. Kessler, "The Social Psychology of Jury Deliberations," in Rita Simon (ed.), The Jury System in America (Beverly Hills, Calif.: Sage) 1975.

4 The sanctity of jury deliberations was guaranteed as early as the fourteenth century in England. Comments, "Impeachment of Jury Verdicts," University of Chicago Law Review 25(Winter, 1958) p. 360. The Delaval rule was instituted in the seventeenth century by Lord Mansfield. The rule prevented the introduction of jurors' affidavits into evidence. This rule had the effect of placing such decisions beyond the reach of review.

5 Some sample statements reveal this tendency rather clearly: "...you must listen to the laws that I am now telling you, and follow them..." "...you must not be influenced by your feelings of sympathy or prejudice." There are even directions about directions: "...you are not to single out any sentence..." Sometimes the instructions include a number of restrictive words: "You must never speculate to be true any insinuation suggested by a question asked a witness." Columbia Law Review 79(1979) pp. 1340 and 1342.

6 Rita J. Simon, "Juries and the Press," Transaction 6(1966)40-42.

7 Stanley Sue, R. E. Smith, and C. Caldwell, "Effects of Inadmissible Evidence in the Decisions of Simulated Jurors," Journal of Applied Social Psychology 3 (1973) 345-353.

8 Sharon Wolf and D. Montgomery, "Effects of Inadmissible Evidence and Levels of Judicial Admonishment to Disregard on the Judgments of Mock Jurors," Journal of Applied Social Psychology, 3 (1977) 205-219.

9 Dale W. Broeder, "Plaintiffs' Family Status as Affecting Juror Behavior," Journal of Public Law 1965.

10 John C. Reinard and Rodney A. Reynolds, "The Effects of Inadmissible Testimony Objections and Rulings on Jury Decisions," Journal of the American Forensic Association 15 (Fall, 1978) 91.

11 Gregory E. Lenehan and Patrick O"Neill, "Reactance and Conflict as Determinants of Judgment in a Mock Jury Experiment," Journal of Applied Social Psychology 11 (1981) 231-139.

12 Jack W. Brehm A Theory of Psychological Reactance (NE: ACADEMIC PRESS) 1966.

13 Wolf and Montgomery.

14 Sue, Smith and Caldwell.

15 Charrow and Charrow.

16 Lenehan and O'Neill

17 Brehm.

18 J. Thibaut, L. Walker, and E. Lind, "Adversary Presentation and Bias in Legal Decision-Making," Harvard Law Review, 86 (1972) 386-401.